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ZONING - NEW YORK

Exeter Bldg. Corp. v. Town of Newburgh

Supreme Court, Appellate Division, Second Department, New York - February 13, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 00996

Developers brought hybrid proceeding pursuant to Article 78 against town, town board members, planning board, zoning board of appeals, and town code enforcement officer, seeking review of determination by board of appeals that developers had not established vested right to develop real property in accordance with prior zoning regulations and seeking declaratory judgment that they had such a vested right. The Supreme Court, Orange County, granted petition to review determination by board of appeals and granted declaratory judgment. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Board of appeals determination was neither arbitrary and capricious nor abuse of discretion, and
- Developers did not acquire vested rights to develop property in accordance with prior regulations.

The doctrine of vested rights is implicated when a property owner seeks to continue to use property, or to initiate the use of property, in a way that was permissible before enactment or amendment of a zoning ordinance but would not be permitted under a new zoning law; in those situations, the right of the property owner is to be balanced against the right of the public to enforce the zoning law.

Determination by town zoning board of appeals that developers and owners of property did not acquire vested right to develop property in accordance with prior zoning regulations was neither arbitrary and capricious nor an abuse of discretion. Even if developers could claim vested rights in reliance of an unconditional final approval of a site plan, town planning board did not grant unconditional approval of developers' site plan and developers failed to fulfill conditions precedent in resolution regarding site plan approval, such that chairperson was not authorized to sign site plan.

Reliance is an essential element of the common law doctrine of vested rights in development of property. Developers did not acquire vested rights to construct entire development project in accordance with prior zoning regulations based on their expenditures and construction in reliance on limited permits, which authorized demolition of single-family house and water tanks, erection of a sign advertising new townhouses, and regrading and clearing, since permits did not amount to town's approval of entire project.